(MICH.)—*Held,* that a grating projecting only two inches or less above a sidewalk is not as a matter of law an obstruction which will render the sidewalk not reasonably safe for public travel.

A city is liable not only for accidents occasioned by negligently constructing sidewalks, but also for negligently permitting the defects to continue. *City of Atchison v. King,* 9 Kas. 550; 2 *Dill. Mun. Corps.,* Sect. 1025. Thus where a defect in a street had been allowed to continue for ten months, it was held that the city was liable for an injury caused thereby. *Lyon v. City of Logansport,* 9 Ind. App. 21. But it has been held that when the defect has continued for several years prior to a complaint, danger was not reasonably to be anticipated and the city was freed from the charge of negligence. *Beltz v. City of Yonkers,* 148 N. Y. 67. As for the manner in which the defect exists in the street, it makes no difference whether the defect is a part of, or attached to, the sidewalk or not. *Pittenger v. Town of Hamilton,* 85 Wis. 356. For it is well settled that if the defect is so near the traveled portion of the walk as to endanger travel thereon, the town is liable. *Fitzgerald v. Berlin,* 64 Wis. 203. But in any case the plaintiff must have used due care in order to recover. *Glantz v. City of South Bend,* 106 Ind. 305; 2 *Dill. Mun. Corps.,* Sects. 1020. And such due care has not been used and the plaintiff cannot recover, if, in broad daylight, he chooses to cross a street where there is a projection which has necessarily been put there, when he could just as well have used another part of the street for his purpose. *Raymond v. City of Lowell,* 60 Mass. 524.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE—RESPONDEAT SUPERIOR.—SCHWALK'S ADM'R. V. CITY OF LOUISVILLE, 122 S. W. REP. 860 (KY.).—*Held,* that persons employed in a city hall in managing and conducting the affairs of the municipality are public officers, charged with the performance of public duties; and the doctrine of *respondeat superior* does not apply to such employment. Nunn, C. J., *dissenting.*

The distinction between public and private powers conferred upon municipal corporations seems to be that when the power conferred has relation to public purposes and is for the public good, it is to be classified as governmental in its nature and appertains to the corporation in its political character. But when it relates to the accomplishment of private corporate purposes, in which the public is only incidentally concerned, it is private in its nature and the corporation is regarded as a legal individual. In the former case, the corporation is exempt from all liability, whether for non-use or misuse; while in the latter case, it may be held to that degree of responsibility which would attach to an ordinary private corporation. *Springfield F. & M. Ins. Co. v. Keesville,* 148 N. J. 46. Therefore, in the absence of a statutory provision, a municipal corporation, acting in furtherance of public purposes and for the public good, is not liable for damages caused by the torts of its officers. *Parks v. City Council of Greenville,* 44 S. C. 168. For the officers of such corporation are *quasi* civil officers of the government, and are personally liable for malfeasance or non-feasance in office; but the corporation is responsible

for neither. *Prather v. City of Lexington,* 52 Ky. 559. Thus, for example, in the case of a teamster's hauling stone for the public purpose of repairing the public highway, and a person was injured through the carelessness of such teamster, the doctrine of *respondeat superior* did not apply. *Barney v. City of Lowell,* 98 Mass. 570. However, in New York it has been held that the doctrine does apply in the case of injuries resulting from the negligence of persons employed by municipal officers in repairing the public sewers. *Lloyd v. City of New York,* 5 N. Y. 369. And, also, in *Stephani v. City of Manitowac,* 89 Wis. 467, the facts of which seem to be somewhat similar to those in the case under discussion—the city was held liable for injuries sustained by reason of a defective drawbridge and failure of manipulation of said bridge by its tender. But with respect to property used for its private purposes and profits, a municipal corporation is subject to the same responsibility as an individual or private corporation under the same circumstances. 2 *Dill. Mun. Corp.,* Sect. 985 *et seq.* Thus, for example, where a city was having work done in a cemetery conducted by a superintendent, it was held liable for injuries to an employee under the superintendent, by reason of the negligence of the latter. *City of Toledo v. Cone,* 41 Ohio St. 149. This doctrine of *respondeat superior* in the case of municipal corporations applies in the same manner and to the same extent with respect to injuries to the property as it does to personal injuries. *Deane v. Inhabitants of Randolph,* 132 Mass. 475.

MUNICIPAL CORPORATIONS—NEGLIGENT ACTS OF OFFICERS—LIABILITY.—JACKSON V. CITY OF OWINGSVILLE, 121 S. W. (KY.).—*Held,* that a city is not liable for injuries sustained by one while breaking rock on the municipal stone pile to pay a fine, in consequence of a splinter of the hammer—used by another engaged in a like occupation—flying off and striking him in the eye, though the accident was caused by the negligence of its officers.

A municipality in exercising police power is acting as the agent of the state, and therefore it has almost invariably been held that it is not liable for the tortious or negligent acts of its officers while so engaged. *Brown v. Town of Guyandotte,* 34 W. Va. 299; *Gullikson v. McDonald,* 62 Minn. 278; *La Cleft v. City of Concordia,* 41 Kan. 323; *McAuliff v. City of Victor,* 15 Colo. App. 337. In some jurisdictions, however, it has been held that where in this respect a municipal corporation is voluntarily assuming a part of the sovereignty of the state, for the purposes of local self government, it was liable for the negligence of its officers. *Edwards v. Town of Pocahontas,* 47 Fed. 268. But it has been held that there is no liability unless the negligent acts are known to the governing officers of the town. *Moffitt v. City of Asheville,* 103 N. C. 237. And it is immaterial that the municipality derives a revenue from the work of the prisoners. *Curran v. City of Boston,* 151 Mass. 505. On the other hand it is well settled that if the police officers are negligent while engaged in some matter outside of their public duties, but connected with the corporate affairs of the city, the municipality will be liable. *City of Hillsboro v. Ivey,* 1 Tex. Civ. App. 653; *Carrington v.*